

AMENDED IN ASSEMBLY AUGUST 23, 2004
AMENDED IN ASSEMBLY SEPTEMBER 4, 2003
AMENDED IN ASSEMBLY JULY 6, 2003
AMENDED IN ASSEMBLY JUNE 19, 2003
AMENDED IN SENATE APRIL 22, 2003
AMENDED IN SENATE MARCH 25, 2003

SENATE BILL

No. 185

Introduced by ~~Senator Sher~~ Senators Sher and Escutia

February 12, 2003

~~An act to amend Sections 398.4 and 398.5 of the Public Utilities Code, relating to electricity. An act to add Section 17203.7 to the Business and Professions Code, relating to unfair competition.~~

LEGISLATIVE COUNSEL'S DIGEST

SB 185, as amended, Sher. ~~Electricity: source disclosure~~
Representative actions.

Existing law defines unfair competition as including any unlawful, unfair, or fraudulent business act or practice, any unfair, deceptive, untrue, or misleading advertising, and other specified conduct relating to representations made to the public. Under existing law, an action for relief from an act of unfair competition may be brought by the Attorney General, a district attorney, county counsel, or a city attorney, or by a person acting for the interests of itself, its members, or the general public. Existing law provides various remedies for violations of the unfair competition laws.

This bill would require a private person bringing an unfair competition action on behalf of the interests of the general public to submit a copy of the complaint to the Attorney General.

~~The existing Public Utilities Act provides for the furnishing of utility services, including electricity, by privately owned public utilities subject to the jurisdiction and control of the Public Utilities Commission and similar services by publicly owned public utilities.~~

~~Existing law establishes a program under which entities offering electric services disclose accurate, reliable, and simple to understand information on the generation attributes of the electricity they propose to sell, including eligible renewables, as defined, and requires beginning March 1, 1999, and annually thereafter, that certain electricity source information be reported to the State Energy Resources Conservation and Development Commission (Energy Commission). Disclosures to end-use customers are required to be made quarterly. Existing law provides that a retail supplier of electricity that does not make any claims that identify its electricity sources as different than net system electricity is authorized to disclose net system electricity sources.~~

~~This bill would require that beginning May 1, 2004, and annually thereafter, that retail suppliers report the information to the Energy Commission. Disclosures to end-use customers would be required to be made annually. The bill would delete the provision authorizing a retail supplier of electricity that does not make any claims that identify its electricity generation sources as different than net system electricity, to disclose net system electricity sources, and would require that all retail suppliers disclose electricity sources as specific purchases and assume the fuel mix of sources that cannot be traced to specific sources to be the fuel mix of net system power. The bill would also require the disclosure of electricity generated from renewables, as defined, and additional identification by fuel type, reflected as a percentage of annual sales, from specified subcategories. The bill would require the Energy Commission, in establishing the format for disclosure of electricity sources, to include disclosure of a retail suppliers' progress in meeting an annual procurement target and of the fuel mix of net system power or other electricity products.~~

~~Since existing law makes any public utility, as defined, and any person or entity other than a public utility, that violates the Public Utilities Act guilty of a misdemeanor, and the provisions of the bill~~

~~would be within the act, this bill would impose a state-mandated local program by expanding a crime.~~

~~The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.~~

~~This bill would provide that no reimbursement is required by this act for a specified reason.~~

Vote: majority. Appropriation: no. Fiscal committee: ~~yes~~ *no*. State-mandated local program: ~~yes~~ *no*.

The people of the State of California do enact as follows:

1 ~~SECTION 1.—Section 398.4 of the Public Utilities Code is~~
2 ~~SECTION 1. Section 17203.7 is added to the Business and~~
3 ~~Professions Code, to read:~~
4 ~~17203.7. (a) A private person bringing an unfair competition~~
5 ~~action on behalf of the interests of the general public shall, within~~
6 ~~10 business days after commencement of the action, submit a copy~~
7 ~~of the complaint to the Attorney General.~~
8 ~~(b) The receipt of information pursuant to subdivision (a) does~~
9 ~~not affect the right of the Attorney General to take any action~~
10 ~~within his or her authority at any time.~~
11 ~~amended to read:~~
12 ~~398.4.—(a) Every retail supplier that makes an offering to sell~~
13 ~~electricity that is consumed in California shall disclose its~~
14 ~~electricity sources for the previous calendar year.~~
15 ~~(b) The disclosures required by this section shall be made to~~
16 ~~potential end-use consumers in all product-specific written~~
17 ~~promotional materials that are distributed to consumers by either~~
18 ~~printed or electronic means, except that advertisements and~~
19 ~~notices in general circulation media shall not be subject to this~~
20 ~~requirement.~~
21 ~~(c) The disclosures required by this section shall be made at~~
22 ~~least annually to end-use consumers of the offered electricity. The~~
23 ~~annual disclosure shall be made by the end of the first complete~~
24 ~~billing cycle for the third quarter of the year, and shall be consistent~~
25 ~~with information provided to the State Energy Resources~~
26 ~~Conservation Development Commission pursuant to Section~~
27 ~~398.5.~~

~~(d) The disclosures required by this section shall be made separately for each offering made by the retail supplier.~~

~~(e) On or before September 1, 2004, the State Energy Resources Conservation and Development Commission shall specify guidelines for the format and means for disclosure required by Section 398.3 and this section, based on the requirements of this article and subject to public hearing.~~

~~(f) The costs of making the disclosures required by this section shall be considered to be generation-related.~~

~~(g) The disclosures required by this section shall be expressed as a percentage of annual retail electricity sales derived from each of the following categories:~~

~~(1) Coal.~~

~~(2) Large hydroelectric (greater than 30 megawatts).~~

~~(3) Natural gas.~~

~~(4) Nuclear.~~

~~(5) Renewables, which include eligible renewable energy resources as defined in Section 399.12, and any other electricity produced from other than a conventional power source within the meaning of Section 2805, excluding a power source utilizing more than 25 percent fossil fuel, shall be additionally identified by fuel type, reflected as a percentage of annual sales, from the following subcategories:~~

~~(A) Biomass and waste.~~

~~(B) Geothermal.~~

~~(C) Small hydroelectric less than or equal to 30 megawatts.~~

~~(D) Solar.~~

~~(E) Wind.~~

~~(F) Ocean wave, ocean thermal, or tidal current.~~

~~(6) Other.~~

~~(h) The State Energy Resources Conservation and Development Commission may specify additional categories or change the categories specified in subdivision (g), consistent with the requirements of this article and subject to public hearing, if it determines that the changes will facilitate the disclosure objectives of this section.~~

~~(i) All electricity sources disclosed as specific purchases shall meet the requirements of subdivision (b) of Section 398.2.~~

1 ~~(j) Specific purchases identified pursuant to this section shall~~
2 ~~be from sources connected to the Western Electricity Coordinating~~
3 ~~Council transmission system interconnected grid.~~

4 ~~(k) In disclosing its electricity sources, every retail supplier~~
5 ~~shall include all specific purchases, and shall assume the fuel mix~~
6 ~~of sources that cannot be traced to specific purchases to be the fuel~~
7 ~~mix of net system power.~~

8 ~~(l) In establishing the format for disclosure of electricity~~
9 ~~sources pursuant to this article, the State Energy Resources~~
10 ~~Conservation and Development Commission shall include~~
11 ~~disclosure of a retail supplier's progress in meeting the annual~~
12 ~~procurement target adopted pursuant to Section 387 for a local~~
13 ~~publicly owned electric utility, or pursuant to Article 16~~
14 ~~(commencing with Section 399.11) for an electrical corporation,~~
15 ~~and of the fuel mix of net system power or other electricity~~
16 ~~products.~~

17 ~~(m) Compliance with this section by a local publicly owned~~
18 ~~electric utility shall constitute compliance with paragraph (2) of~~
19 ~~subdivision (b) of Section 387, except that renewables that are~~
20 ~~eligible renewable energy resources as defined in Section 399.12~~
21 ~~shall be distinguished from other renewables disclosed pursuant to~~
22 ~~paragraph (5) of subdivision (g).~~

23 ~~(n) The provisions of this section shall not apply to generators~~
24 ~~providing electric service onsite, under an over-the-fence~~
25 ~~transaction as described in Section 218, or to an affiliate or~~
26 ~~affiliates, as defined in subdivision (a) of Section 372.~~

27 ~~SEC. 2.—Section 398.5 of the Public Utilities Code is amended~~
28 ~~to read:~~

29 ~~398.5.—(a) Retail suppliers shall report on May 1, 2004, and~~
30 ~~annually thereafter, to the State Energy Resources Conservation~~
31 ~~and Development Commission, for each electricity offering, for~~
32 ~~the previous calendar year each of the following:~~

33 ~~(1) The kilowatthours purchased, by generator and fuel type~~
34 ~~during the previous calendar year, consistent with the meter data,~~
35 ~~including losses, reported to the system operator.~~

36 ~~(2) For each electricity offering the kilowatthours sold at retail.~~

37 ~~(3) For each electricity offering the disclosures made to~~
38 ~~consumers pursuant to Section 398.4.~~

39 ~~(b) Information submitted to the State Energy Resources~~
40 ~~Conservation and Development Commission pursuant to this~~

1 section that is a trade secret as defined in subdivision (d) of Section
2 3426.1 of the Civil Code shall not be released except in an
3 aggregated form such that trade secrets cannot be discerned.

4 (e) On or before September 1, 2004, the State Energy
5 Resources Conservation and Development Commission shall
6 specify guidelines and standard formats, based on the
7 requirements of this article and subject to public hearing, for the
8 submittal of information pursuant to this article.

9 (d) In developing the rules and procedures specified in this
10 section, the State Energy Resources Conservation and
11 Development Commission shall seek to minimize the reporting
12 burden and cost of reporting that it imposes on retail suppliers.

13 (e) On or before October 15, 1999, and annually thereafter, the
14 State Energy Resources Conservation and Development
15 Commission shall issue a report comparing information available
16 pursuant to Section 398.3 with information submitted by retail
17 suppliers pursuant to this section, and with information disclosed
18 to consumers pursuant to Section 398.4. This report shall be
19 forwarded to the California Public Utilities Commission. In
20 preparing the report, the State Energy Resources Conservation and
21 Development Commission may require an audit of a local publicly
22 owned electric utility only upon a finding, by the State Energy
23 Resources Conservation and Development Commission, of good
24 cause.

25 (f) Beginning June 15, 2004, and annually thereafter, the State
26 Energy Resources Conservation and Development Commission
27 shall issue a report calculating net system power. The State Energy
28 Resources Conservation and Development Commission will
29 establish the generation mix for net generation imports delivered
30 at interface points and metered by the system operators.

31 (g) The provisions of this section shall not apply to generators
32 providing electric service onsite, under an over-the-fence
33 transaction as described in Section 218, or to an affiliate or
34 affiliates, as defined in subdivision (a) of Section 372.

35 (h) The State Energy Resources Conservation and
36 Development Commission may verify the veracity of specific
37 purchase claims made by retail suppliers.

38 SEC. 3. No reimbursement is required by this act pursuant to
39 Section 6 of Article XIII B of the California Constitution because
40 the only costs that may be incurred by a local agency or school

1 ~~district will be incurred because this act creates a new crime or~~
2 ~~infraction, eliminates a crime or infraction, or changes the penalty~~
3 ~~for a crime or infraction, within the meaning of Section 17556 of~~
4 ~~the Government Code, or changes the definition of a crime within~~
5 ~~the meaning of Section 6 of Article XIII B of the California~~
6 ~~Constitution.~~

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